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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/075,795

02/13/2002

Donald W. Bryan

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EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

02/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/075,795	Applicant(s) BRYAN, DONALD W.	
	Examiner DAVID COMSTOCK	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55,57 and 59-192 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19,27-36,92-101,127-136,144-152,160,161,169-177,191 and 192 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>13 FEB 2002</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 20-26,37-55,57,59-91,102-126,137-143,153-159,162-168 and 178-190.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species 1, Fig. 2, in the reply filed on 7 June 2007 is acknowledged. Applicant has withdrawn claims 20-26, 37-55, 57, 59-91, 102-126, 137-143, 153-159, 162-168 and 178-190. Further, Applicant has canceled claims 56 and 58. Claims 1-19, 27-36, 92-101, 127-136, 144-152, 160, 161, 169-177, 191 and 192 read on the elected Species and are under consideration.

Claim Objections

The claims are subject to objection to because of the following informalities; however, the objection has been stayed since, at this point, correction cannot be made according to 37 CFR 1.126. The following is noted for future reference of Applicant.

The numbering of claims is not in accordance with 37 CFR 1.75(f), (g), which requires that all dependent claims be numbered consecutively and grouped together with the claim or claims to which they refer to the extent practicable. Improperly grouped claims complicate the examination process and require much more time to diagram and examine. For example, beginning after claim 8, all of the claims are misnumbered because at least claims 17, 18, 97, 98, 191 and 192 are improperly grouped (more specifically, for example, claim 17 should have been numbered 9 as originally filed, in order to remain grouped with claim 8 from which it depends, and so as to not follow intervening claims 9-16, 18 and 191). Because it would be improper to

renumber the claims during prosecution (see 37 CFR 1.126), no changes can be made. However, Applicant is reminded of the proper manner of presenting original claims, for future reference. Examiner, recognizes that when new claims are added it becomes impossible to group them with all of the claims from which they may depend; however, this exception to grouped claim numbers applies to numbering newly added claims during prosecution and not to the process of drafting the original claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19, 27-36, 92-101, 127-136, 144-152, 160, 161, 169-177, 191 and 192 rejected under 35 U.S.C. 102 (a) and (e) as being anticipated by Brace et al. (6,187,005; cited by Applicant).

Brace et al. discloses the claimed invention including a spinal fixation device comprising a connecting member 60, a fastening member 14, 66, and an elongate support member 16 (see e.g. Figs. 6-8). The connecting member comprises a female-tapered through passage. The fastening member can penetrate bone and has a male-

tapered external portion 66 configured and dimensioned to matingly engage with the sidewalls defining the female-tapered through-passage to lock the connecting member in position. The device may comprise a second through-passage comprising threads 82 (see Fig. 8). A set screw 58 for use with a driver is shown. The fastening member comprises a spherical mid-collar 22 that is approximately equivalent in size to a head portion of the set screw, which comprises a hexagonal portion exposed to the outside (i.e. is accessible by a tool from the outside of the device). The connecting member comprises a gripping member 62 having a concave sidewall. The device includes a stem portion 74. The device can be characterized as having offset upper and lower portions with a relative angle between the portions being defined with respect to various different parts/features of the device (e.g. 74). The upper portion of the male-tapered external portion comprises a female-threaded recess. The disclosed method would be inherent in the ordinary use of the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DC/

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733